

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**LEVEL 3 COMMUNICATIONS,
L.L.C.**

Plaintiff,

v.

**SPECTRUM ENVIRONMENTAL
SERVICES, INC.,**

Defendant.

Civil Action No.

COMPLAINT

Plaintiff, Level 3 Communications, L.L.C. ("Level 3") states the following as and for its Complaint against the Defendant, Spectrum Environmental Services, Inc. ("Spectrum").

JURISDICTION AND VENUE

1. Plaintiff Level 3 is a Delaware limited liability company, with its principal place of business in Broomfield, Colorado. Level 3's sole member is Level 3 Financing, Inc., a Delaware corporation with its principal place of business in Broomfield, Colorado.

2. Upon information and belief, Defendant Spectrum is an Alabama corporation with its principal place of business in Pelham, Alabama.

3. The matter in controversy, exclusive of interest and costs, exceeds \$75,000.00. Diversity of citizenship exists and this Court therefore has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(1).

4. The acts and omissions giving rise to this action occurred in this District. Venue is therefore proper pursuant to 28 U.S.C. § 1391(a), (c).

BACKGROUND FACTS

5. Level 3 is a telecommunications company which provides interstate telecommunications services. These telecommunications services are provided through, among other means, a nationwide network of fiber optic cables, which are buried underground.

6. By Permit Agreement with the State of Alabama Department of Transportation (the "State"), Level 3 possesses the right to install and operate a fiber optic cable and conduit in the right-of-way of State Road 79 in Jefferson County, Alabama. By virtue of this Permit Agreement, Level 3 is entitled to undisturbed possession of that right. In accordance with this Permit Agreement with the State, Level 3 installed and operates a fiber optic cable in the right-of-way of State Road 79 in Jefferson County, Alabama.

FIRST CAUSE OF ACTION **(Trespass)**

7. Level 3 repeats and realleges each and every allegation contained in Paragraphs 1 through 6 above.

8. Upon information and belief, on January 25, 2006, Spectrum was, without Level 3's knowledge or consent, and against Level 3's will, excavating with mechanized equipment at or near the intersection of State Road 79 and Valley East Industrial Drive in Jefferson County, Alabama.

9. Upon information and belief, on January 25, 2006, without Level 3's knowledge or consent, and against Level 3's will, Spectrum damaged Level 3's cable while excavating with mechanized equipment as described in Paragraph 8 above.

10. As a result of Spectrum's actions, Level 3 sustained disturbance to its rights of use or servitude, and damages to and loss of use of the cable which has resulted in actual damages to Level 3 in excess of \$75,000.00 consisting of the costs of repairs to the cable.

11. At the point Spectrum damaged it, Level 3's cable was located completely within the right-of-way of State Road 79 pursuant to Level 3's Permit Agreement with the State.

SECOND CAUSE OF ACTION
(Negligence)

12. Level 3 repeats and realleges each and every allegation contained in Paragraphs 1 through 11 above.

13. Upon information and belief, Spectrum acted negligently in conducting the excavation on or about January 25, 2006. This negligent conduct included, but is not limited to the following:

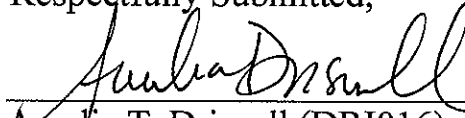
- (a) Failing to provide notice of the location and date of its planned excavation to Level 3 or a One-Call Notification System as required by ALA. CODE § 37-15-4(b) (2007 Cum. Supp.);
- (b) Failing to renew a notice of intent to excavate with Level 3 or a One-Call Notification System at least two days prior to the expiration of the notice of intent to excavate as required by ALA. CODE § 37-15-4(d);
- (c) Excavating pursuant to a notice of intent to excavate which was invalid, as a matter of law, pursuant to ALA. CODE § 37-15-4(d);
- (d) Failing to conduct excavation activities so as to avoid damage to or minimize interference with existing underground facilities in and near the excavation area as required by ALA. CODE § 37-15-8(a);
- (e) Failing to train its employees involved with the excavation with respect to the applicable statutes, regulations and industry standards regarding excavation in the area of underground utilities;
- (f) Failing to adequately supervise its employees and ensure they complied with all applicable statutes, regulations and industry standards regarding excavation in the area of underground utilities; and
- (g) Failing to adhere to all applicable federal and state statutes and regulations and all applicable industry standards and guidelines as they relate to the protection of underground utilities.

14. As a result of Spectrum's actions and/or omissions, Level 3 has sustained damage to the cable which has resulted in actual damages to Level 3 in excess of \$75,000.00 including, but not limited to, costs of repair of the cable.

WHEREFORE, Plaintiff Level 3 respectfully requests judgment in its favor against Defendant Spectrum Environmental Services, Inc., awarding Level 3 actual damages in excess of \$75,000.00, interest thereon as allowed by law, all costs of this action and all other and further relief as this Court deems proper.

DATED this 22nd day of January, 2008.

Respectfully Submitted,



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DEFENDANT WILL BE SERVED BY ATTACHED SUMMONS.